



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.06.2018

CORAM:

THE HONOURABLE Mr. JUSTICE C.T.SELVAM
and
THE HONOURABLE Mr. JUSTICE A.M.BASHEER AHAMED

H.C.P.(MD) No.540 of 2018

Kalaiselvi

... Petitioner

Vs.

1. The State of Tamil Nadu represented by
The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George,
Chennai - 600 009.
2. The District Collector cum District Magistrate,
Sivagangai District,
Sivagangai.
3. The Superintendent of Central Prison,
Central Prison, Madurai. ... Respondents

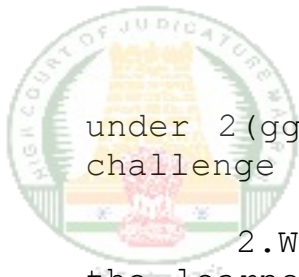
PRAYER: The petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, call for the entire records leading to the detention of the petitioner's son Prabhakar, S/o.Pandiarajan, under Section 2 (ggg) of Act 14/1982 vide detention order dated 20.03.2018 on the file of the second respondent herein made in proceedings in Cr.M.P.No.06/S.O./2018 and quash the same and consequently direct the respondents herein to produce the body and person of the said detenu before this court and thereafter set him at liberty from Central Prison at Madurai.

For Petitioner : Mr.R.Meenakshi Sundaram
For Respondents : Mr.V.Neelakandan
Additional Public Prosecutor

ORDER

(Order of the Court was made by C.T.SELVAM, J.)

The petitioner is the mother of the detenu herein, viz., Prabhakar, aged about 23 years, S/o.Pandiarajan. The detenu has been detained by order in No. in Cr.M.P.No.06/S.O./2018 dated 20.03.2018, holding him to be a "Sexual Offender", as contemplated



under 2(ggg) of Tamil Nadu Act 14 1982. The said order is under challenge in this Habeas Corpus Petition.

2. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents. We have also perused the records produced by the Detaining Authority.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel for the petitioner would mainly focus his argument on the ground that there is gross violation of procedural safeguards, which would vitiate the detention. The learned counsel, by placing authorities, submitted that the representation made by the petitioner was not considered on time and there was an inordinate and unexplained delay.

4. The learned Additional Public Prosecutor opposed the Habeas Corpus Petition. He would submit that though there was delay in considering the representation, on that score alone, the impugned detention order cannot be quashed. According to the learned Additional Public Prosecutor, no prejudice has been caused to the detenu and thus, there is no violation of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India.

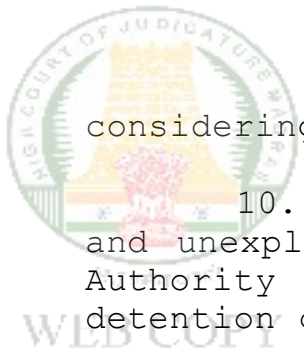
5. The Detention Order in question was passed on 20.03.2018. The petitioner made a representation dated 02.04.2018. Thereafter, remarks were called for by the Government from the Detaining Authority on 04.04.2018. The remarks were duly received on 11.04.2018. Thereafter, the Government considered the matter and passed the order rejecting the representation on 13.05.2018.

6. It is the contention of the petitioner that there was a delay of **five** days in submitting the remarks by the Detaining Authority.

7. In **Rekha Vs. State of Tamil Nadu**, [2011 (5) SCC 244], the Hon'ble Supreme Court has held that the procedural safeguards are required to be zealously watched and enforced by the Courts of law and their rigour cannot be allowed to be diluted on the basis of the nature of the alleged activities undertaken by the detenu.

8. In **Sumaiya Vs. The Secretary to Government**, [2007 (2) MWN (Cr.) 145], a Division Bench of this Court has held that the unexplained delay of **five** days in disposal of the representation made on behalf of the detenu would be sufficient to set aside the order of detention.

9. In **Tara Chand Vs. State of Rajasthan and others**, [1980 (2) SCC 321], the Hon'ble Supreme Court has held that any inordinate and unexplained delay on the part of the Government in



considering the representation renders the very detention illegal.

10. In the subject case, admittedly, there is an inordinate and unexplained delay in submitting the remarks by the Detaining Authority in considering the representation. The impugned detention order is, therefore, liable to be quashed.

11. In the result, the Detention Order, passed by the second respondent, in his proceedings in Cr.M.P.No.06/S.O./2018, dated 20.03.2018, is quashed. The detenu namely, Prabhakar, aged about 23 years, S/o.Pandiarajan, is ordered to be set at liberty forthwith, if his detention is not required in connection with any other case.

12. In the upshot, we allow the Habeas Corpus Petition.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St.George, Chennai - 600 009.
2. The District Collector cum District Magistrate,
Sivagangai District, Sivagangai.
3. The Superintendent of Central Prison,
Central Prison, Madurai.
4. The Joint Secretary to Government,
Public (Law and Order),
Fort.St.George, Chennai - 9.
5. The Addl.Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 1 cc TO Mr.R.Meenakshi Sundaram , Advocate in SR No. 69213

das/rj2

AE/RSK/SAR1/10.07.2018/3P/7C

H.C.P. (MD) No.540 of 2018
21.06.2018